to have a bit of information which he is not bound to impart to anybody which the first assignee is not bound to give him, and which the second is not bound to trouble himself about.

It is certainly not to be regretted that a rule so purely artificial and technical has, in many American jurisdictions, failed to gain a foothold. See the cases collected in Ames, Cases on Trusts, 2d ed., 326–328; and see also 7 HARVARD LAW REVIEW. 305.

SHALL A NEGLIGENT PARENT RECOVER FOR A CHILD'S DEATH? — Though the authorities are still in conflict, it seems clear on principle that, where an infant sues for injuries caused by the defendant's negligence, the contributory negligence of his custodian should not be imputed to him so as to defeat his action. In jurisdictions where this doctrine is accepted a more difficult question arises. When a child is killed through the combined negligence of his parent and the defendant, and the parent, as administrator, brings action for the death of the child, being himself the sole beneficiary in case of recovery, is his contributory negligence a good defence? The courts which have been called upon to answer this question are pretty evenly divided in their answers. In the recent case of *Bamberger* v. *Citizens' St. R. Co.* (31 S.W. Rep. 163) the Tennessee court discusses the subject thoroughly, and comes to the conclusion that in such a case the parent's contributory negligence is a good defence to the action. *Wymore* v. *Mahaska County* (78 Iowa, 396) presents the opposite view. (See Tiffany on Death by Wrongful Act, §§ 69–71, for a full discussion of the subject.)

On the one hand it is urged that the action is purely in the right of the child, — his estate in fact is suing, and it should consequently recover whenever the child himself could have recovered had his injuries not proved fatal. At first sight this seems the strictly logical view. On the other hand, it must be remembered that the right of the administrator to bring this action is not a common law right, but is purely statutory. The statutes, of which every State has one, are copied more or less closely from Lord Campbell's Act, and ordinarily provide, in substance, that where the deceased could have recovered if he had lived, his administrator can recover for the benefit of the next of kin; and the courts which support the view taken in the Tennessee case add the qualification that, as the next of kin is the real party in interest, he must have been free from fault himself in order to reap the benefit provided for by the statute. This works justice, but is it reading too much into the statute? It hardly seems so. It is by no means uncommon in statutory actions for damages for courts to hold that contributory negligence is a good defence, though not mentioned in the statute. (*See Quimby* v. *Woodbury*, 63 N. H. 370.) And in the case under discussion it would apparently do no violence to the intention of the legislature to interpret the statute as not merely providing for the survival of the child's right of action, but as giving the next of kin a new right of a special nature, the enforcement of which is conditioned on freedom from contributory negligence. This interpretation supports Mr. Tiffany's conclusion that the right of the deceased to maintain an action is not the sole test of the right of the beneficiaries to recover damages for his death, but merely one of the conditions of their right.